

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No. 569264 and MERCHANT MARINER'S DOCUMENT No. Z-873422
Issued to: Leslie E. ROBERTS

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2429

Leslie E. ROBERTS

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 10 June 1985, an Administrative Law Judge of the United States Coast Guard at New York, New York, admonished Appellant upon finding proved the charge of misconduct. The specification found proved alleges that while serving as pilot aboard the Greek flag M/V VERGO, under the authority of the captioned documents, on 4 September 1984, Appellant piloted the vessel on the Delaware River from Fairless Steel Works, Trenton, New Jersey, to Philadelphia, Pennsylvania, an are beyond the scope of his license. Aa second charge, alleging negligence, was found not proved and was dismissed.

The hearing was held at Philadelphia, Pennsylvania, on 28 March, 18 April, and 8 May 1985.

At the hearing Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence four exhibits and testimony of one witness.

In defense, Appellant introduced in evidence three exhibits and his own testimony.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge entered a written order admonishing Appellant.

The complete Decision and Order was served on 14 June 1985. Appeal was timely filed on 9 July 1985 and perfected on 23 July 1985.

FINDINGS OF FACT

Appellant holds a Federal License which is endorsed as follows:

First Class Pilot of steam and motor vessels of any gross tons upon the Delaware River from Reedy Point, DE to Philadelphia, PA; Operator of uninspected towing vessels upon the inland waters of the United States, excepting waters subject to the International Regulations for preventing collisions at sea 1972; Radar Observer (inland waters) - expires November 1984 issued at Baltimore, Maryland March 4, 1983.

On 4 September 1984, Appellant was serving as "Docking Pilot" aboard the M/V VERGO while the vessel was being towed by five tugs from the Fairless Steel Works, Trenton, New Jersey, to a shipyard in Philadelphia, Pennsylvania, via the Delaware River.

The waters of the Delaware River which are involved in this proceeding are not encompassed within the pilotage endorsement on Appellant's license.

BASIS OF APPEAL

Appellant contends that the geographic limitation described in his pilot's endorsement does not apply in this situation.

APPEARANCE: Thomas E. Seus, Esq., Kelly, Harrington, McLaughlin & Foster, 1700 Atlantic Building, 260 South Broad St., Philadelphia, PA 19102.

OPINION

Appellant argues that the geographic limitation of his pilot's endorsement was erroneously applied in this case. I agree.

Appellant was charged with piloting the M/V VERGO in an area beyond the scope of his license. Implicit in the charge is the allegation that a federally licensed pilot was required during the voyage in question. There is, however, nothing in the record to establish that a federally licensed pilot was required.

Further, the Administrative Law Judge found this to be "a towing situation," (impliedly, on "inland waters of the United States" and thus within the geographic scope of Appellant's towing vessel operator license) requiring a licensed operator under 46 USC 8904 which provides:

A towing vessel that is at least 26 feet in length

measured from end to end over the deck (excluding sheer) shall be operated by an individual licensed by the secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

Appellant possessed such a license.¹

CONCLUSION

The allegation that Appellant was piloting the M/V VERGO during the voyage in question is not supported by the record. The facts of this case establish that Appellant was required to possess, and in fact did possess, a license which authorized him to act as a towing vessel operator.

ORDER

The order of the Administrative Law Judge dated at New York, New York, on 10 June 1985 is VACATED, the findings are SET ASIDE, and the charge and specification DISMISSED.

J. C. IRWIN
Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C., this 5th day of August, 1986.

¹The Administrative Law Judge's determination that a licensed towing vessel operator was required is consistent with Appeal Decision 2393 (STEWART) where, as here, Appellant was directing the movements of several towing vessels from his position aboard the vessel being towed. In STEWART, the Vice Commandant stated, "One who directs and controls the operation of a towing vessel must be licensed by the Coast Guard. R.S. 4427, as amended, 46 U.S.C. 405(b) [current version at 46 U.S.C. 8904] The location of the person issuing orders does not conclusively determine whether he is directing and controlling the tug or tugs involved."